Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
New Part 4 of the Commission's Rules	)	ET Docket No. 04-35
Concerning Disruptions to Communications	)	

To: The Commission

COMMENTS OF THE BLOOSTONLAW PAGING GROUP

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Filed: May 25, 2004

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Summary

The BloostonLaw Paging Group is concerned that the Commission's proposal to require the immediate filing of outage reports once the 900,000 user-minute threshold is reached (followed by more detailed reports within 30 days) is impracticable in methodology and approach and would place undue financial, administrative and logistical burdens on paging carriers. As an alternative, the BloostonLaw Paging Group recommends that the Commission require a contemporaneous outage report only when it appears that the origin of the outage is suspicious in nature and annual or semi-annual reporting for other outages. The Commission's present proposal to require immediate reporting would divert necessary resources from repair and service restoration or force paging carriers to hire additional personnel at a time economic considerations do not justify this additional expenditure.

Paging is a necessary and valuable service, particularly to public safety, medical and business users. Paging receivers permit the user to receive numeric as well as text messages, the latter of which is important to public safety users inasmuch as text messaging permits the dissemination of critical information without the use of two-way radio systems that are vulnerable to monitoring by the public.

Paging is not generally susceptible to outages that are due to technical failure. Rather, the vast majority of service disruptions are the result of weather related phenomena, such as lighting strikes, tornadoes, wind storms, hurricanes and ice storms, and as such, are localized in nature. And, because of the way most wide-area paging systems are configured, the loss of a single transmitter site is not likely to impact a large number of users on the system.

Finally, the BloostonLaw Paging Group is concerned that the Commission's proposal to make outage reports publicly available would be contrary to our homeland security interests. In the post September 11, 2001 environment, disclosure of this information would only serve to publicize information regarding vulnerabilities in our nation's telecommunications critical infrastructure, which is contrary to the public interest.

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COMMENTS

The BloostonLaw Paging Group, as identified in Attachment A hereto, by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. As an initial matter, the BloostonLaw Paging Group believes the Commission is well intentioned in seeking to ensure reliable telecommunications by expanding its outage reporting rules to include wireless communications. Nonetheless, the BloostonLaw Paging Group is concerned that the Commission's proposal, as applied to the paging services, is impracticable in methodology and approach and would place undue financial, administrative and logistical burdens on paging carriers of all sizes and whose burdens outweigh its benefits. As an alternative, the BloostonLaw Paging Group urges the Commission to require contemporaneous outage reporting only when it appears that the origin of the outage is suspicious in nature and, for all other outages of non-suspicious origin, that periodic reporting (preferably on an annual or semi-annual basis) be adopted.

I. Statement of Interest.

The carriers comprising the BloostonLaw Paging Group operate Commercial Mobile Radio Service (CMRS) one-way paging facilities licensed by the Commission in primarily medium and small markets throughout the United States. These carriers have a significant interest in the outcome of this proceeding. The rules ultimately adopted will directly impact their operational procedures and capabilities in the event of a service outage by imposing regulatory burdens on their limited resources when time would be better spent more productively.

The BloostonLaw Paging Group agrees with the Commission's conclusion that paging carriers provide an important telecommunications service to public safety entities and the medical community. Because paging primarily relies on numeric and/or text messaging, important messages can be sent simultaneously to multiple recipients (via group "CAP" codes) in the event of an emergency, either through the Public Switched Telephone Network (PSTN), over the Internet or through a direct connection to the paging carrier's switch. Many local governments have linked their Public Safety Answering Point (PSAP) computer-aided dispatch (CAD) consoles to their paging carrier's paging system in order to transmit CAD dispatch data to police, fire and emergency medical services personnel in the field. In this way, public safety personnel are able to promptly receive text messaging dispatches over their pagers in addition to the voice dispatch over the two-way radio system as well as sensitive information that the dispatch center may not wish to broadcast over its two-way dispatch radio system. As a

result, many paging carriers have long ago taken the step of alerting their public safety and hospital based customers (as well as other large accounts) in the event of a service disruption in the account holder's area.

II. The Commission's Proposed Outage Reporting Requirements Will Place Onerous Burdens on the Paging Industry with Negligible Benefit to the Public.

A. The Design of Typical Paging Systems and the Types of Failures Make the Commission's Proposed Reporting Metric Impracticable and Unnecessary.

The Commission has proposed that any outage of 30 minutes or more which **potentially** could total 900,000 user-minutes, be reported to the Commission within 120 minutes of reaching the 900,000 or more user-minute threshold.[1] Given the design of typical paging systems and the nature of paging system failures, this requirement is impracticable and would create a plethora of unnecessary filings. This is due to the theoretical "potential" that every user on the affected paging system could be located within the same area that is served by an affected transmitter whose portion of the service area is not encompassed by the service area of an operational neighboring co-channel transmitter.

Paging networks typically consist of incoming landline trunks, one or more switches and a variable number of transmitters, link transmitters (control stations) which are used to transmit the paging message to an end-user's paging receiver. When a paging number is dialed, the call is routed through the PSTN to dedicated trunks that connect to

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[1] The "common metric" proposed by the Commission is an outage lasting at least 30 minutes and the number of "user minutes" potentially affected per outage must equal or exceed 900,000 user-minutes, which is the product of 30,000 users times 30 minutes.

the paging switch.[2] The paging switch authenticates the pages and routes them through an encoder to be sent simultaneously to all of the RF transmitters on the paging network. Because, in a one-way paging system, the subscriber does not acknowledge receipt of the page or otherwise "talk-back," the paging carrier cannot know where the particular paging user, for whom the call is sent, is located at any given moment in time.

Multi-transmitter paging systems typically are designed so that the coverage of each co-channel transmitter overlaps to some extent the coverage of adjacent transmitters.[3] If a single transmitter is out of service for maintenance or otherwise fails, the coverage of neighboring transmitters will generally permit the paging messages to be received in much of the area covered by the out-of-service transmitter. Even with this design, there may be a loss or degradation of service if end-users are located in areas where building penetration is an issue, e.g., basements, elevators, and shielded rooms, including X-ray areas in a hospital or medical laboratory. In order to overcome building

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[2] In those cases where Internet access is available, such that the pager receiver has, in effect, an "e-mail address," the paging message can be routed over the Internet directly to the paging switch if the sender uses the pager's e-mail address. Inasmuch as only a relatively small percentage of one-way paging messages are routed over the Internet, this type of access should be considered to be an adjunct to the basic dial-up service described above. Thus, the loss of Internet connectivity for sending paging messages would not be considered an outage for purposes of the FCC's proposal since traditional dial-up access would still be available.

[3] Additionally, in order to expand a paging system's coverage footprint, a large number of paging carriers have traditionally entered into intercarrier or sharing arrangements with other co-channel licensees in order to develop multi-carrier wide-area systems. Under these arrangements, carriers tie their individual paging systems together, in many cases by sharing paging terminals, so that each system transmits each of the participating carrier's traffic. As a result of this type of arrangement, a carrier would not know the number of potentially affected paging units since the carrier would not be privy to the

penetration issues, it is not uncommon for carriers to install in-building radiation systems and/or fill-in transmitters at PSAPs, medical facilities and at other locations. Likewise, paging carriers generally identify transmitting sites that are "critical" either due to location (e.g., main site in a wide-area system, or located at a hospital, public safety facility, or other important customer location) and therefore subject to immediate repair in the event of an outage. Other transmitting sites, which may be more remotely located, may not be repaired until normal business hours if the subscriber impact is considered by the carrier to be insignificant.[4]

Generally, almost all paging service outages involve only a particular transmitter or a small cluster of transmitters and not the carrier's entire system. Typical causes are either weather related (lightning strike, wind, ice, tornadic activity, etc.), mechanical involving the transmitter or antenna system, or the loss of electrical power. Much less common are outages which involve the paging switch or terminal, a disruption in a satellite uplink (which may be operated by the licensee or provided by an outside service provider) or the loss of a trunk provided by the local exchange carrier (LEC). As a result, paging outages are usually localized. However, if a paging switch or satellite uplink were to experience a failure or the carrier lost its trunk line from the LEC, then there could be a

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total number of pagers placed on the system by the other participating carriers at any given moment in time.

[4] It should be noted that if the outage involves the station's antenna system, no matter how quick the response by the paging carrier, restoration of service would be delayed since a tower crew would be needed to climb the tower, scheduling and weather permitting. How quickly a tower crew can actually respond is generally beyond the control of the carrier.

wide-spread loss of paging service on the affected system, unless the carrier has redundant systems in place to preclude or minimize a disruption of service.

Given that most paging outages are localized in nature, the BloostonLaw Paging Group is concerned that a localized outage on a wide-area system could unnecessarily trigger a reporting requirement even though few subscribers would actually be affected. To illustrate, suppose that a hypothetical wide-area paging system covers an area that runs from Norfolk, Virginia to Wilmington, Delaware and that the system serves 30,000 paging units. At 2:00 AM on a Sunday morning during a holiday weekend, the antenna for a transmitter in rural Virginia is struck by lightening. This lighting strike destroys the antenna system, which renders the transmitter incapable of operation. The paging carrier has no customers with addresses located in this area, and, at any moment, only a handful of people are actually in the area. The BloostonLaw Paging Group believes that this localized outage should not be reportable even though, theoretically, 900,000 user-minutes would elapse once the transmitter was out of service for 30 minutes. While there are 30,000 pagers on the wide-area system, there is no reasonable likelihood that more than a relatively small number of paging subscriber units, much less 30,000, would be within the same exclusive service area of the out-of-service transmitter at any given moment in time during the duration of the service outage.[5]

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[5] Taken to its logical conclusion, the common metric, as proposed, would result in thousands of unnecessary outage reports where the outage is truly localized in nature. As a result, the Commission's limited resources would be far outstripped inasmuch as the Commission has indicated that it is anticipating only a total of 1,000 reports annually from all communications service providers.

In any event, regardless of the nature of the outage, most paging carriers have established procedures for rectifying outages in a prompt manner. These procedures include established mechanisms to alert large accounts (including public safety entities and hospitals) of a service disruption. Additionally, some carriers also have internal trouble reporting systems which inform necessary personnel of the paging systems' status and any outages so that repairs can be made without undue delay. This is because service outages of one sort or another are a common occurrence, which are resolved on an on-going basis. As more fully developed below, the added regulatory burden of requiring an initial report to be filed with the Commission within 120 minutes of reaching the 900,000 user-minute threshold would tax limited staff resources and would be overly burdensome without any real benefit.

B. The Proposed Reporting Requirement Would Divert Necessary Resources from Repair and Service Restoration to Reporting or Force Paging Carriers to Hire Additional Personnel.

The BloostonLaw Paging Group understands that the Commission's proposal is, in part, related to homeland security, but is in great measure an effort to collect data to develop "best practices" that are designed to prevent future service outages. Because of paging system architecture, the likelihood is that the typical outage would be localized in nature resulting from a random weather related occurrence. It is highly unlikely that terrorist activity would be the direct cause of a paging system outage. Accordingly, the BloostonLaw Paging Group urges the Commission to drop its proposal that paging carriers file an initial outage report within 120 minutes of reaching the 900,000 user-

minute threshold. Imposing such a requirement would not assist the Commission in determining anti-terrorist activities, but would only serve to divert the service technician's attention from his primary responsibility – prompt restoration of paging service to the public. This is because the technician would have to take the time to find a location from which he or she could establish Internet connectivity, prepare the initial outage report and file the report electronically with the Commission via the Internet. And, because most paging carriers would likely find that imposing this requirement on the service technician is impracticable (either because the technician has significant travel time to the affected transmitter location or the technician is located in an area where wireless Internet access is not available to make the report over the Internet as proposed by the Commission), the carrier would likely be forced to hire additional staff in order to meet this reporting requirement. The better solution is to only require after-the-fact reporting on a periodic basis. Periodic reporting would provide the Commission with the tools necessary to collect data from which it (along with the industry) could perhaps develop best practices to reduce service disruptions and outages.

III. Given the Decline of the Paging Industry, the Proposed Regulatory Requirements Would Place an Undue Financial Burden on Paging Carriers.

The outage reporting requirement, as proposed by the Commission, would place a severe financial burden on paging carriers. Over the past eight years, the paging industry has dramatically declined from a highly competitive, profitable and robust industry to an industry that is now characterized by low profitability, substantially declining subscriber bases and intense competition from other commercial mobile radio services, including

digital cellular, 800 MHz SMR-cellular like services and broadband PCS. Over the past few years, several major carriers, including Mobile Media Corp., TSR Wireless, Arch Wireless, WebLink Wireless, Inc., Preferred Networks, Inc. and Metrocall (the second largest paging carrier in the United States) were forced to file for bankruptcy protection. And, because the state of the industry was such that it could not support all of the paging carriers, not all of these carriers were able to reorganize their debt and successfully emerge from bankruptcy. In fact, some of the largest carriers, including TSR Wireless, were forced into liquidation because of the general state of the paging industry.

The Commission's own reports confirm that between 1998 and 2000, the percentage of change in growth of paging/messaging units dramatically decreased from an increase of 4.4 percent per year to a decrease of 1.1 percent per year and that the average monthly revenue per paging decreased as well. Implementation of Section 6..2(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Sixth Report, 16 FCC Rcd. 1350 at Table 5 (2001). In its 2001 CMRS Competition Report, the Commission found that for calendar year 1999, while two-way mobile telephony providers generated an average of $41.00 per month per subscriber, average paging carrier revenues dropped to $8.00 per month per subscriber unit. The Commission has acknowledged the continued decline in paging, inasmuch as it has noted that subscribership has dropped from 40.8 million paging units in FY1997 to 14.1 million at the end of Calendar Year 2002. See Assessment and Collection of Regulatory Fees for

Fiscal Year 2004, Notice of Proposed Rulemaking, MD Docket No. 04-73, (Rel. March 29, 2004) (FY 2004 Regulatory Fees NPRM).

This precipitous decline in paging subscriber base and revenue has been further exacerbated by the Commission's simultaneous increases in regulatory fees, federally mandated assessments and additional reporting requirements. These increases in regulatory burdens have all acted to increase paging carriers' overhead costs at a time when paging carriers, for competitive reasons, are unable to pass many of these additional costs onto their subscribers. Thus, paging carriers have been forced to absorb more costs as overhead, as part of their struggle to maintain a competitive edge over other telecommunications services in the marketplace.[6] While there is no specific cost estimate associated with the Commission's proposed reporting requirements, it is likely that additional employees will need to be hired in order to ensure that initial outage reports are timely filed. Thus, additional staff time will be required to (a) determine when an outage becomes reportable and (b) prepare and file the initial report with the Commission in the required amount of time. And, because the Commission has proposed a very short window for the initial outage report, it will not be practicable for the technician assigned to handle the outage to make the report since the technician could have significant travel

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[6] It is for this reason, in part, that the Commission has proposed, in its Notice of Proposed Rulemaking, not to increase the messaging regulatory fee for FY2004. See FY2004 Regulatory Fees NPRM at para 6 citing Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, MD Docket No. 03-83 at para 21 (Rel. July 25, 2003) (The Commission agreed that the decline in paging subscribership may be long-lasting and because the paging industry is spectrum-limited, geographically localized and very cost-sensitive, it is very difficult for the paging industry to pass on increases in costs to its subscribers).

time to the affected transmitter site, especially if it is a remote site. More importantly, the technician's attention should not be on making a timely regulatory filing in connection with the outage. Rather, the technician should be focused on making a repair as promptly as possible in order to restore service to the public.

IV. Recommended Solution

The Commission's proposal has not established that there is a terrorist threat to paging which would justify the imposition of a contemporaneous outage reporting requirement on paging. Unlike the two-way CMRS services (e.g., cellular, broadband PCS, 800 MHz SMR, etc.), paging is typically a one-way service that relies on the PSTN (either directly or indirectly) to get the paging message from the sender to the paging receiver – whether it be a numeric message that is keyed into a telephone or CMRS phone or a text message that is sent via dial-up modem to the paging carrier or via the Internet via dial-up modem, ISDN or DSL line. Because paging is a "downstream" service, the likelihood of it being a specific critical infrastructure target is remote. Accordingly, there is no public interest justification to impose the proposed initial reporting requirement on paging carriers.

Because of the Commission's concerns with homeland security, the BloostonLaw Paging Group urges the Commission to adopt a contemporaneous reporting requirement for outages whose origins appears suspicious. In this way, the Commission would be in a

position to determine whether suspicious activity is a precursor to a potential terrorist plot[7].

With respect to outages of non-suspicious origin, the BloostonLaw Paging Group urges the Commission to permit paging carriers to submit periodic outage reports on an annual basis (and certainly no more frequently than semi-annually). These periodic reports should provide the Commission with the data necessary to determine the types of outages that typically occur within the paging industry, the steps necessary to correct those outages, and where preventable, the steps that could be taken to prevent such outages in the future. In this way, the Commission and the paging industry would be in a position to develop a "best practices" procedure that would take into account the unique technological and business realities affecting the paging industry.

Finally, should the FCC conclude that outage reports will be required for individual transmitter failures, the BMDDP Paging Carriers urge the Commission not to require the reporting of a transmitter outage where the service area is substantially covered by neighboring transmitters. While a single transmitter is out of service, there may in fact be no service disruption. As a result, there would be no event to report.

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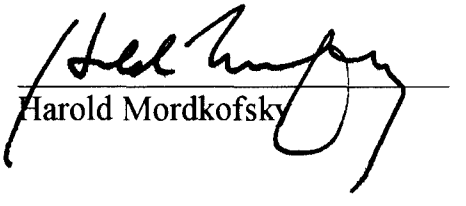
[7] At para. 52 of the NPRM, the Commission seeks comment on whether the outage reports filed by carriers should be made available to the public. Given the fact that the outage reports, as proposed to be required by the Commission, would detail vulnerabilities in the telecommunications infrastructure, the Blooston Paging Group believes that it would be counterproductive to homeland security to make these points publicly available.

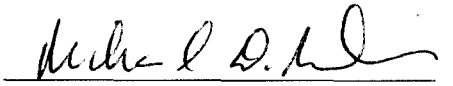
V. Conclusion

As discussed above, the technology and system design for paging systems is unique, inasmuch as (a) paging carriers (unlike other wireless carriers) are not able to determine the location of their customer's paging receivers and (b) the failure of a single transmitter and/or antenna system typically will have only a negligible impact on most paging systems; especially multi-transmitter wide-area paging systems. Likewise, unlike most other wireless industries, the paging industry has passed its prime and is struggling to survive competitively and financially. The Commission should adopt the outage reporting requirements described above that better fit the paging industry.

Respectfully submitted,

THE BLOOSTONLAW PAGING GROUP

By: 
Harold Mordkofsky

By: 
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Attachment A

The BloostonLaw Paging Group is comprised of the following paging carriers:

Allcom Communications, Inc. – Fayetteville, Arkansas
Business Service Center, Inc. – Wausau, Wisconsin
Lubbock Radio Paging Service, Inc. – Lubbock, Texas
Mobile Phone of Texas, Inc. – Wichita Falls, Texas
Porta-Phone Paging Licensee Corp – Tallahassee, Florida
Robert F. Ryder d/b/a Radio Paging Service – Boise, Idaho
Satellink Paging, LLC – Roswell, Georgia
Teletouch Licenses, Inc. – Tyler, Texas